

10/648,702
May 20th, 2005
Reply to Office Action of 02/22/2005

Via Facsimile

Remarks

This amendment is in response to the February, 22nd, 2005 Office Action. Applicant respectfully traverses Examiner's rejections of claims 1-20 in light of the following remarks:

Applicant digresses from the main argument to make the following objection:

The Examiner used an internet document that does not have a clear publication date. The date noted by the Examiner states "most recent updates took place on..." However, applicant does not believe this to be a reliable date for the following reasons:

- i) The date cited most likely requires a manual update separate and independent from the posting of information on the cite. A user of the cite could probably update information to that cite and neglect to update the "most recent updates" portion.
- ii) The date could apply to the "Decision Support Systems" section (which is strangely blank at in the Examiner's cited version, but which has been since updated with information), and not to the RFID section.
- iii) There is not evidence that this research web-site was available to the public on the date indicated.
- and iv) The document is not currently available on the Internet, though an updated cousin is. Not only does this make it difficult to determine exact dates, but it further suggests that the cite is actively updated.

Applicant request that, under MPEP 2128, the Examiner ask the Scientific and Technical Information Center to find the earliest date of publication, as specified by MPEP § 901.06(a), paragraph IV. G.

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Claim Rejection under 35 USC 102

Nevertheless, applicant traverses the Examiner's assertion that the cited art even teaches applicant's invention as claimed.

Claims 1-5, 7-13, 15, 16, 18 and 20 were rejected under 102(e) as being anticipated by the Internet article, which, in the event that the articles does have an earlier publication date, is hereby traversed.

All of Applicant's claims include the act of *inserting* at least one tag into a tree. The cited prior art teaches *attaching* a tag to a young tree and then letting the tree grow up and around the tag. This is visible in diagram by the "tag (year 1)/ tag (year 20" labels and the accompanying description. To further support this assertion, applicant has examined the other documents included at the cited Internet location:

<http://www.cfr.washington.edu/research.pfc/research/index.htm>

which links to:

<http://www.cfr.washington.edu/research.pfc/research/rfid.htm>

relevant sections of which are appended to this document.

Although the language of these documents says that the tags are placed "inside of a seedling" it is clear the tags are attached to the trunk of a seedling (which is then grafted onto a parent tree), and the tree is allowed to grow over the tag. The tags are in fact being inserted into a graft.

A linking Power Point™ presentation in fact says that: "injection is not viable", that it is unknown exactly how the seedlings will react, and that they still need to develop a method for RFID tag attachment.

Applicant, on the other hand, has specified that insertion is what is being claimed, and that using the term "insertion" as commonly used, as well as how it

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is described in Applicant's patent application, is not the attachment process taught by the cited art.

Although applicant believes that the above arguments pertain to all pending claims, applicant wishes to further articulate comments to some specific claims:

Specifically, in regards to claims 2 and 3, the appended photos and text clearly indicate that the cited art causes significant physiological impact to the tree and that the tag sticks out like a large tumor even after 6 months.

Specifically, in regards to claim 9, applicant fails to understand how "what trees are in a conservation easement?" amounts to instructions on how to manage a tree.

Claim Rejections under 103

The examiner further rejected claims 6, 19, 14 and 17 as being unpatentable over the internet article in view of Cybulski (6,669,089), the examiner's personal experience, and/or Mosher Jr. (5,973,600).

Applicant traverses these rejections in light of the above arguments, as well as the following remarks:

Claim 17. In the cited article, the author used one of only approximately 8 sentences written to specify that the "tag is passive and only reflects the readers signal." This clearly teaches that the use of active tags are not appropriate. Reasoning for this is may not be immediately clear, however, little is clear from the brevity of the article. Combination of this reference with one that suggest the use of other than passive tags goes against the article's teachings.

Claim 14. Applicant traverses the Examiner's assertion that a RFID scanner mounted to a forklift for reading pallets is comparable to RFID scanners

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mounted on vehicles (such as lumber trucks), lumber yard entrances, lumber yard buildings or truck inspection stations that read RFID tags cut trees.

Respectfully submitted,
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by

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recognition under CFR 11.9(b)
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